REPORT AND RECOMMENDATIONS OF THE JUDICIAL COMPENSATION COMMITTEE 1991

Members of the Committee:

Don Baizley
Harold Piercy
Charles Curtis

June 7,1991

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This Committee is the first compensation committee appointed pursuant to section 11.1(1) of the Provincial Court Act. This section and others related to it were passed in early 1990 and follow the 1989 report of the Law Reform Commission of Manitoba on Judicial Independence. The report concluded that the practice of paying the salaries of Provincial Judges out of the consolidated revenue fund which results in Cabinet determining salary levels, is not satisfactory. Setting salaries in this manner erodes the very crucial concept of independence of the Judiciary, at least as a matter of perception, if not in fact. Inevitably the practice also leads to a demeaning struggle over dollars between the judiciary and the Government. This of course further erodes the perception of independence.

The Commission made a series of recommendations,

including the establishment of an independent committee for the purpose of determining the remuneration of the Judges.

The jurisdiction of the Committee is set out in section 11.1(1) of the Act:

> **"Compensation committee established**
> **11.1(1)** The minister shall, once every two years, commencing in 1990, cause a compensation committee, to be known as the Judicial Compensation Committee, to be established to review, determine and report to the minister on, the salaries and benefits payable to judges, including pensions, vacations, sick leave, travel expenses and allowances."

The Act further provides that once submitted, the report of this Committee shall be tabled by the Minister and thereafter be referred to a standing committee of the Legislature which will report on the recommendations of this Committee.

In accordance with section 11.2(2) of the Act, the Provincial Judges designated Harold Piercy, Industrial Relations Consultant and the Attorney-General designated Charles Curtis, Deputy Minister of Finance, as well as Don Baizley, a member of the Manitoba Bar to the Committee. An Order-in-Council dated August 8, 1990 designated Don Baizley as the Chairperson and the aforementioned persons as members.

Written submissions were received from the Provincial Court Judges Association of Manitoba and the Government of Manitoba. The Judges' brief included a number of letters from other members of the judiciary.

Notices to the public were published in Winnipeg and Brandon daily newspapers and a number of letters from members of the public were received including letters from some members of the Manitoba Bar.

Public hearings were held in Winnipeg January 7, 8, 9 and 11, 1991. The Committee heard from a number of witnesses, including several Provincial Judges and two actuaries, one called by each of the Provincial Judges Association and the Manitoba Government. Considerable statistical, historical and geographical data was provided as well as a great number of articles, reports and surveys concerning the work of other commissions and committees charged with a similar task.

There are currently 38 full time, 2 supernumerary, and 9 part time Provincial Judges in Manitoba. With a number of new positions being created in Ontario, Manitoba will have the second lowest ratio of Provincial Judges to population in the country. This statistic lends credence to the contention that the work load of the Manitoba Judge is at least equal to

if not greater than that of their counterparts elsewhere in Canada.

Since this review process is the first of what is to occur every two years, this report articulates some broad principles which will, hopefully, lead to some acceptable conclusions, as well as assist in future determinations.

The Committee's mandate is to look at the entire compensation package. Obviously the primary focus must be in the area of salary and pensions. These will be dealt with under separate headings. Nevertheless the two are inextricably linked. The principles articulated as applying to salary, are in the opinion of the Committee, equally applicable to the question of pensions.

Currently, Provincial Judges in Manitoba are the lowest paid in the country. Table 1 sets out the current (as of June 1991) salary rates for Judges in Canada.

TABLE 1

JUDICIAL SALARIES IN CANADA

Federal	-	$147,800.00	
Alberta	-	$113,962.00	(recommended)
British Columbia	-	$111,000.00	(recommended)
Ontario	-	$110,500.00	
Quebec	-	$107,500.00	
Nova Scotia	-	$102,100.00	
Prince Edward Island	-	$ 96,000.00	
Newfoundland	-	$ 90,168.00	
Saskatchewan	-	$ 90,000.00	($104,000 has just been recommended by the equivalent committee in Saskatchewan)
New Brunswick	-	$ 94,614.00	
Manitoba	-	$ 88,607.00	

As can be seen, Judges in Manitoba are currently paid $21,893.00 less than the highest salary presently paid their counterparts. They are also paid $59,193.00 less than Queen's Bench Judges in Manitoba.

In terms of a comparison to average salaries, the variance changes considerably depending on the jurisdictions used as comparisons. Compared, however, with the average salaries paid or recommended for their counterparts (not including Queen's Bench and the $104,000.00 recommended for Saskatchewan), they are currently paid approximately $13,000.00 per year less than that average.

The recommended Saskatchewan salary of $104,000.00 has not been used in these calculations because, as will be seen from our conclusions, the actual salary and pension paid

in Saskatchewan impacts significantly on this Committee's conclusions and recommendations. In calculating the average we have, however, used the recommended salaries for Alberta and British Columbia.

TABLE 2

AVERAGE SALARIES - PUISNE JUDGES (EXCLUDING MANITOBA)

Nine Provinces plus federal	$106,364.00
Nine Provinces	$101,760.00

The current salary level has been in place since September 23, 1989. Table 3 shows the history of salary levels for Provincial Judges since 1979.

TABLE 3

PROVINCE OF MANITOBA
PROVINCIAL JUDGES SALARIES

	Judges
March 24, 1979	$42,716
March 22, 1980	49,444
March 21, 1981	56,706
March 20, 1982	63,613
March 19, 1983	64,607
April 1, 1985	67,084
October 1, 1985	70,000
July 1, 1986	72,660
July 1, 1987	74,309
September 29, 1987	76,541
August 1, 1988	79,491
September 24, 1988	81,874
July 29, 1989	85,090
September 23, 1989	88,607

It is difficult to pinpoint when and how Provincial Judges in Manitoba fell so far out of step with their coun-

terparts elsewhere. However, as is the case with the federally appointed Judges, the disparity is significant, and the data presented shows that the disparity is growing.

Part of the reason for there being no increase since 1989 is the establishment of this Committee. Accordingly one of the issues that the Committee will have to address is that of retroactivity.

Historically the Judges have either negotiated salary levels with the Attorney General on an annual basis or had their salary tied to a given level of senior civil servant classification.

In 1979 the Government announced that salaries for Provincial Judges would be tied to the schedule of a Senior Officer 6, which was then the highest public service classification. This eliminated the necessity for annual discussion with the Attorney General concerning salary.

In 1987, the Government determined that salaries would again be linked to senior civil servant classifications, this time to a senior officer 7, which was a newly created classification. This linkage has continued to date. Judges' salaries are equivalent to the 6th and final step in the Senior Officer 7 classification. Subsequently, a new Senior Officer 8 was introduced with a salary range from

$85,317.00, running in 6 steps, to the maximum of $103,109.00. If the Provincial judges had been accorded this maximum in the Senior Officer 8 classification, then they would be earning an annual salary which is approximately $14,500.00 more than is presently paid.

A further historical comparison is also illuminating: in 1983 Manitoba Provincial Judges received a salary equal to 75% of a Queen's Bench Judge, by 1990 it had dropped to 60%.

The task of determining appropriate compensation for Judges is difficult and complex. Given the unique role of the judiciary in our society, some of the most important considerations applicable to judges have little or no relevance when determining appropriate compensation for other groups within society.

The independence of the judiciary is a cornerstone of our society. Much has been written on this subject, but perhaps no better than Sir William Holdsworth, quoted in the 1978 report of the Advisory Committee on Judicial Compensation:

> "The Judges hold an office to which is annexed the function of guarding the supremacy of law. It is because they are the holders of an office to which the guardianship of this fundamental consti-

> tutional principle is entrusted, that the judiciary forms one of the three great divisions into which the power of the State is divided. The judiciary has separate and autonomous powers just as truly as the King or Parliament and, in the exercise of those powers, its members are no more in the position of servants than the King or Parliament in the exercise of their powers . . . the Judges have powers of this nature because, being entrusted with the maintenance of the supremacy of law, they are and always have been regarded as a separate and independent part of the Constitution."

Underlying the whole question of judicial compensation therefore is the need to preserve the independence and integrity of Judges, not only from political, but also from financial pressures. Also fundamental to the parliamentary system, is the need to ensure that the judiciary occupy a place of respect in society.

Thus, as has been noted by a number of bodies concerned with this issue, there are some basic criteria which ought to be followed when establishing the level of judicial compensation. The first is that compensation must be sufficient to attract and retain lawyers who have the necessary qualifications, ability, experience and integrity.

The second is that adequate compensation must be provided to Judges "so that they may preside and dispense

justice with serenity and impartiality", in the words of the 1978 Canadian Advisory Committee on Judicial Compensation.

Finally, compensation must be sufficient to ensure that Judges will be perceived by the community to be persons of means in keeping with the office they occupy.

While these objectives should not be minimized they only measure relativity, and of course require the context of factual comparisons to have meaning.

Reduced to its simplest terms, our task is to determine a compensation package sufficient to attract and retain qualified persons in a manner that preserves the respect for and independence and integrity of the judiciary.

Obviously we must determine what other occupations can be considered comparable for purposes of establishing appropriate compensation. Our conclusion is that the most compelling comparison is with their counterparts in other jurisdictions.

Senior Civil Servants are often one group that is used as a comparison. Certainly they represent some of the most responsible positions and the highest salaries paid by Governments.

This comparison draws criticism for a number of reasons. As stated by Lederman in "Judicial Independence and Court Reforms in Canada for the 1990's":

> "Judges are not civil servants. They are, so to speak, servants only of the law itself. They are judges and judges only, with no other career employment or interest. They have guaranteed tenure in office with assured public salaries and pensions. They cannot be instructed how to decide the cases that come before them. If a judge has a specific personal interest in the outcome of a case that comes before him, he declares it, disqualifies himself, and another judge is assigned."

Thus, it is argued that comparison to civil servants only serves to blur the distinction between the judiciary and the Government, which distinction is so crucial to judicial independence.

In addition, the fact is that the functions, duties, and responsibilities of the two positions are very different.

There are many constraints facing any member of the judiciary. Judges are obliged to isolate themselves to a significant extent from the legal community specifically as well as the community as a whole. They are restricted as to organizations they can join, the business ventures in which they engage, and even in their leisure activities. Further,

by accepting a position on the Bench, a lawyer usually cuts him or herself off from the practice of law. Opportunities for resumption of a legal career are at best severely limited and at worst non-existent.

Civil servants do not face these restrictions on their personal or professional lives. Certainly, in terms of their careers such employment may bring other opportunities within the civil service or otherwise.

There is one respect, however, in which the salaries of senior civil servants offer some assistance. Their salaries are an indication of the Government's ability to pay at any given point in time.

From a historical perspective and also as an indicia perhaps in the future of what is an appropriate rate, this information is of assistance. For instance, had the Judges been placed at the top step in the Senior Officer 8 classification as opposed to remaining at step 6 in the Senior Officer 7 classification, they would now be earning $103,019.00. In other words, their salary would be approximately $14,500.00 more per year.

Given that the pool of talent from which Provincial Judges are drawn consists of lawyers in private practice or public service, this is a group that must be considered com-

parable. The question becomes what compensation will be sufficient to attract members of that group to the Provincial Bench?

The report of the Canadian Bar Association Committee on the Independence of Judiciary in Canada, (August, 1985) concluded that it is neither necessary nor desirable for judicial salaries to be set at a level equivalent to that earned by senior members of the private Bar prior to being appointed. The most obvious reason is that this would tend to attract people to the Bench for purely financial reasons. The type of person who might accept a position on the Bench because it paid well may not be the best Judge. There is a significant element of public service in this position.

The Report concluded that the salaries of Provincial Judges should be attractive to members of the private bar or public service who are successful and who have 10 or more years of practice. We agree with that view. This may mean for some that they will have to accept a reduced level of income in exchange for the long term security of tenure and the opportunity to serve the public in a position that is unique, challenging, and respected.

Unfortunately the data concerning the incomes of practicing lawyers that was presented to the Committee was

not of a sufficiently scientific nature to be of compelling assistance to us.

Ultimately, the unique nature of Judging makes comparisons with other positions of little value; it is other judicial salaries that are really the most relevant guide as to what is appropriate compensation for Judges in Manitoba.

Of all the issues before us, the most contentious is the question of parity with federally appointed Judges. A number of commissions, committees and tribunals have examined compensation for Provincial Judges since the inception of this level of court. This issue appears to have been addressed in every instance and conclusions have varied. Provincial Governments have always opposed the notion and the Judges have always advocated it.

The most compelling argument in favour of parity is the role and function of Provincial Judges. It is difficult to underestimate the importance of their task. Arguably their role is just as important in our society as that of federally appointed Judges. The Provincial Court deals primarily with rights of persons and questions of liberty, whereas Superior Courts, to a significant extent, deal with questions of property. Contained in a report such as this, concepts such as "liberty" and "rights of persons" are rather antiseptic. In reality however, the consequences of many of

the day to day decisions of Provincial Judges to individual citizens cannot be minimized. The need for persons with judicial temperaments, who have the necessary legal skills and the ability to administer justice carefully and appropriately is no less pressing in the Provincial Court than in any other court. The demands of the job can be great and the working conditions, particularly on circuit, may be trying. Often, these trying conditions result because the Provincial Court attempts, as much as practicable, to go to the people rather than having the people come to the court.

In the Committee's view, although their work is in some respects different than federally appointed Judges, the Provincial Judges should not be distinguished in terms of importance or contribution to our society. The difference by and large is that the two positions are paid from two different entities, that have very different demands on their resources and substantially different revenue-producing capabilities. As noted in the 1988 Report of the Ontario Provincial Courts Committee, Provincial Governments do not have the plenary powers of taxation of the Federal Government; nor the authority to regulate interest rates or money supply.

This fact imposes an overriding economic reality. Salary levels of federally appointed Judges are set nationally. Accordingly, in order to attract qualified candidates in Toronto and Montreal, salaries must be far in excess of what

would be necessary to attract qualified candidates residing, for example, in a small centre in New Brunswick or Saskatchewan.

As a result of the economic and related factors, we are obliged to reject parity with Federal Judges. However, given that judicial positions in other provincial jurisdictions are the most relevant comparables, compensation packages paid to such Provincial Judges must be considered.

The Committee is of the view that national or even regional averages that include very large cities such as Toronto or Vancouver, offer little assistance. What does seem most appropriate are comparisons with those jurisdictions where the population base and economic factors are similar to those of Manitoba. These may change over time, but based on the data provided to this Committee, Nova Scotia, New Brunswick and Saskatchewan presently are the three provinces with which Manitoba most readily compares. None have an urban centre of the size of Toronto, Vancouver or Montreal. Their working conditions and cost of living are comparable, and, most significant of all, their ability to pay appears comparable. They fall in the 5 through 7 range in terms of the Government's provincial rankings for the various economic indicators which illustrate the economic health of a province.

While it is obvious that the Judges in Manitoba have fallen seriously behind all relevant comparisons, we recognize that hardly a worse time could exist to request an increase in funding from the Provincial Government. The economic conditions prevailing at the time of these hearings and deliberations are a matter of considerable concern. Within the last few months we have endured a nurses' strike and the Government is now headed into extremely difficult negotiations with the Manitoba Government Employers' Association.

That this Committee is deliberating and reporting at this time is very much an accident of history. This unfortunate timing is not the fault or responsibility of either the Government or the Provincial Judges Association. For many years now the parties have been endeavouring to arrive at a mechanism for determining compensation. It is apparent that during this period the compensation of the Manitoba Provincial Judges continued to fall further behind their counterparts.

Compounding these problems of difficult economic times and unfortunate timing is the fact that this increase in public funding is required for the criminal justice system. Unfortunately, because most members of society do not come in direct contact with the criminal justice system, there probably is not a strong political will to remedy in-

equities within the system. As a consequence, it is far too easy for increases in funding of the nature being recommended by this Committee to slide down the list of public priorities.

There can be no question that we must take into account the Government's ability to pay in these very difficult economic times. However, a comparison to Nova Scotia, New Brunswick and Saskatchewan does factor in "ability to pay". "Ability to pay" is largely a product of economic conditions and population. Thus similarities in economic indicators lead to some conclusions about "ability to pay".

Table 4 sets forth the current salary levels for these jurisdictions.

TABLE 4

Nova Scotia	$102,100.00	
Saskatchewan	$ 90,000.00	(*1991 $104,000.00 recommended)
New Brunswick	$ 94,614.00	
Manitoba	$ 88,607.00	

We have been deliberately cautious in our decision as to which jurisdictions should be used as comparables. The future may well show that more weight than necessary was given to economic indicators or that restriction of the comparison to these three provinces has been overly cautious.

In our view the minimum to be achieved is the average of these three comparable jurisdictions. Failure to meet even this level would factor in "ability to pay" twice. To use the jargon of labour relations, this would be "double dipping". It would be inconceivable to us that the Government could fail to pay at least this level on any other basis than a professed concern that the public purse could not withstand the kind of escalation in salary and pension that would be required to bring them into line with this average. Should this view prevail, the Provincial Judges will only fall further behind and the Government will only postpone the inevitable catch-up that will have to be achieved.

On the basis of the above numbers, the immediate average to be achieved is $95,571.00 (ignoring for the moment Chief Judge and Associate Chief Judges). There is, however, a significant increase being recommended in Saskatchewan by its equivalent committee. A copy of the summary of the conclusions of the Saskatchewan Committee is attached as Appendix "A" to this report. Presumably, the Saskatchewan Government will be adjusting compensation for its judges in light of Appendix "A", albeit that such adjustment might not necessarily be in strict accordance with these recommendations. It is our view that the ultimate decision of the Saskatchewan Government should be factored into these calculations.

These recommendations are given at this time in view of the particular circumstances existing. Whether the comparison with Saskatchewan, New Brunswick and Nova Scotia will remain relevant two years hence and subsequently is a matter that will, of course, be addressed at that time. We are, however, of the view that the comparison at this time represents a balanced approach to the difficulties facing both the Judges and the Government. We have given great weight to the issue of economic considerations. In hindsight, this approach may prove to have been more cautious than necessary. This is a matter that may be addressed by future committees.

We turn now to pensions. In theory, one of the reasons pensions must be set appropriately is to endeavour to prevent persons from becoming financially trapped in positions they no longer desire. This is particularly so in the case of a position such as judges, when there are little, if any, alternate career opportunities.

In Manitoba, as with their counterparts in other jurisdictions as well as Federally appointed Judges, the quantum of pension available to a Judge upon retirement bears a relationship to the salaries earned by the Judges prior to retirement.

If all Provinces and the Federal Government were using the same formula to calculate the pension entitlement, there would in fact be a system applicable to all Canadian Judges whereby their pensions are based on the same percentage of their salary where, of course, all other factors such as age and years of service are considered. The same formula however, is not universally applied across the country.

The pension benefits available to Manitoba Provincial Judges fall short, and are indeed seriously inadequate for two reasons. The first reason is that the salaries of Manitoba Provincial Judges are the lowest paid in Canada. Thus, that consideration suppresses the pension level. Secondly, and far more importantly, the formula used to calculate the pensions for Manitoba Judges is inferior to the formula used in any other jurisdiction in Canada, except for Newfoundland. Accordingly, Manitoba Provincial Judges get the worst of both worlds so to speak, with the formula applied to them being the greatest negative influence on their pensions.

Using the same comparisons to other jurisdictions, namely Nova Scotia, New Brunswick and Saskatchewan, the following is a comparison of pensions payable to Manitoba Provincial Judges as compared with those benchmark Provinces, assuming retirement at December 31, 1991.

TABLE 5

***Approximate Annual Pension Income**

	Manitoba	Nova Scotia	New Brunswick	Saskatchewan
Appointed at age 40 (25 years)	$ 32,726	$ 67,223	$ 51,345	$ 58,330
Appointed at age 45 (20 years)	$ 26,181	$ 67,223	$ 52,422	$ 49,662
Appointed at age 50 (15 years)	$ 19,636	$ 67,223	$ 53,500	$ 36,659

* The figures used in this Table do not take into account the recommendations of Appendix "A" and have been re-calculated based on the most current information available to the Committee.

Manitoba Provincial Court Judges' pensions are calculated on the basis of a five year averaging period, while Nova Scotia and Saskatchewan use a three year averaging period, and New Brunswick uses one year. Manitoba Judges' pension entitlement has, in the before-mentioned calculations, been reduced by 12½% due to taking into account a survivor's pension which is built into the pension available in the three other Provinces.

The information presented to this Committee is that the average age of appointment to the Manitoba Bench is 43. Therefore, the best general comparison is the table in respect of a Judge appointed at age 45 who serves on the bench for 20 years, retiring at age 65. A Manitoba Provincial

Court Judge in those circumstances would be entitled to $26,181.00 annually (factored for survivor's benefit) compared with an average annual pension benefit of approximately $56,400.00 for Nova Scotia, New Brunswick and Saskatchewan.

In summary, a Manitoba Provincial Judge appointed at the same age and serving on the bench for the same period of time would receive approximately $30,250.00 per year less than the average for these three Provinces. Stated another way, Manitoba Provincial Judges in identical circumstances would receive only approximately 46% of the average for these Provinces at retirement.

These difficulties and inconsistencies have arisen, in our opinion, because other Provinces appear to have structured their pension plans for Provincial Court Judges, recognizing the influences and considerations which operate with respect to appointees to the Bench, while Manitoba has not so structured its plan for Provincial Court Judges. While The Civil Service Superannuation Act may well be equitable and fair for career public servants, it does not, in our opinion, adequately provide for Judges anymore than it would be adequate for Members of the Legislature.

Provincial Court Judges are usually appointed to the Bench, not at the end of their potentially high earnings years, but for the most part during the early years of high

income potential. Assuming they have limited personal wealth, it seems to us that at normal retirement age of 65 they can either elect to accept a pension, (which in the circumstances we see as inadequate), or they may elect to actively remain on the Bench for reasons which are driven primarily by an inadequate pension income.

The Civil Service Superannuation Act acts as a bar to participants contributing and having contributions made to their pension plan after age 70 years and 11 months. As a consequence, Provincial Court Judges by virtue of their being appointed at an average age of 43, are unable to "make-up" in later years the service years that many other participants in the plan would likely earn during their earlier years.

All these negative factors are at work in terms of pension benefits available to Provincial Court Judges. In addition, during their years on the Bench they have been limited by the maximum Registered Retirement Savings Plan (RRSP) levels available to persons who are members of a group pension plan. In other words, even if their salaries were sufficient to allow them to supplement their inadequate pensions, the requirement to be a member of the pension plan acts as a bar to them supplementing their inadequate pension to any significant degree by utilization of the RRSP vehicle.

In our opinion, viewed objectively, it cannot be said that the current pension benefits available to Manitoba Provincial Court Judges are adequate. It is not in the public interest that the status quo remained unchanged.

Judges are not civil servants. For the same reasons as noted earlier in this report, it is not, in our view, a defensible position to argue that a pension plan which operates primarily for civil servants, is appropriate for application to Judges.

Security of tenure and financial security go to the heart of an independent Judiciary. The former is available to Manitoba Provincial Court Judges, but the latter, namely, financial security, is seriously wanting. It is true that the application of the Manitoba Civil Service Pension Plan does not, in and of itself, affect the discretionary control of Government or its Executive over Judges. However, by unilaterally applying what we believe are civil servants' employment conditions (more particularly - pensions) which are inappropriate to Judges, the effect is that Government and its Executive are unfairly affecting the financial security of Judges. Once again, this is something which blurs the fundamental concept of judicial independence.

The information before us is that the Federal jurisdiction and every Provincial jurisdiction in Canada,

save for Manitoba and Newfoundland, have recognized that it is necessary to make special pension provisions for Judges, and have done so. We urge that special pension provisions be made for Manitoba Provincial Judges. In fact, s.55(1) of The provincial Court Act addresses the issue of judicial pensions. The section permits the Lieutenant-Governor-in-Council to make regulations.

> "55(1)(d) Providing for pension benefits for Judges and their surviving spouses and surviving children and for the transfer or other disposition of benefits in respect thereof to which persons appointed as Judges under this Act were entitled as Manitoba Government Employees at the time of their appointment under this Act."

The facts are that no regulations have been promulgated pursuant to s.55(1)(d) and as a consequence the pensions, in keeping with The Civil Service Superannuation Act, continue to apply to Manitoba Provincial Court Judges as if they were civil servants.

The Provincial Court Judges Association, through its Counsel, urged us to recommend that Judges continue to be members of the Civil Service Superannuation Plan and that additional benefits be provided by a supplementary, non-contributory, non-registered pension plan. That process was urged on us by virtue of recent changes to Income Tax law.

CONCLUSION

In the final analysis then, we recommend that effective January 1, 1991 the salary for Provincial Judges be set at $95,570.00, Chief Judge $102,570.00 and Associate Chief Judge $97,570.00. (Subject to a recalculation based on the 1991 Saskatchewan salaries).

With respect to the matter of retroactivity we recommend that from January 1, 1990 to July 31, 1990 the respective salaries be set at $91,000.00 for a Provincial Judge, $93,000.00 for an Associate Chief Judge and $97,500.00 for the Chief Judge; and from August 1, 1990, $93,000.00 for Provincial Judges, $95,000.00 for an Associate Chief Judge and $99,000.00 for the Chief Judge.

As indicated previously, this recommendation as to salary is made in conjunction with the recommendations as to pension. We see these two recommendations as being inextricably linked. To view the recommendations as severable would not be consistent with our recommendations. In fact, if we had been dealing with salaries only, our recommendations would have been for a higher salary level than contained in this report.

With respect to pensions we are recommending that as an urgent priority, pensions be made available to Manitoba

Provincial Court Judges approximately equivalent to the average of pension benefits available to Provincial Judges in Saskatchewan, New Brunswick and Nova Scotia. While this result could be achieved by the process urged by the Judges Association, we are not specifically recommending that that process be adopted. For ourselves, we believe the substance of our recommendation is of the essence and the process is secondary.

Further, we recommend that representatives of the Government of Manitoba and the Manitoba Provincial Judges Association, including their actuaries, be encouraged to meet for the purpose of conducting discussions for implementing our recommendation. We have said that the pension issue ought to be dealt with as an urgent priority. For greater clarity as to our recommendation, we urge that new pension benefits for Manitoba Provincial Court Judges be implemented by October 1, 1991, and have application to all full-time judges in active service as of the effective date of the appointment of this Judicial Compensation Committee; that date being August 8, 1990.

Finally, we turn to the matter of the adjustment to fringe benefits such as mileage allowances, meal expenses when travelling, and incidental allowance for sundry items such as shirts, collars, books, periodical drycleaning and other incidentals. Because of the current economic consider-

ations and the Committee's view that salary and, in particular, pensions require adjustment as an urgent priority, we are unable to conclude that there should be a change in existing policy with respect to these benefits at this time.

All of which is respectfully submitted.

Dated at Winnipeg, Manitoba this 7 day of June, 1991.

DON BAIZLEY - Chairperson

HAROLD PIERCY (see addendum attached)

Qualification

I agree in principle with the report and its conclusions. However, in light of the serious economic conditions affecting the fiscal capacity of the Province, and the general freeze on salaries in the public sector, it is my view that consideration of an increase in compensation level should be deferred until significant improvement takes place in the economy of Manitoba.

CHARLES CURTIS

APPENDIX A

SUMMARY OF RECOMMENDATIONS BY THE SASKATCHEWAN PROVINCIAL COURT COMMISSION ON JUDGES COMPENSATION

1. SALARY

Commencing October 1, 1990, the salary of Provincial Court Judges should be $104,000.00. On October 1, 1991, and on October 1, 1992, the salary should be increased by the rate of increase in the Consumer Price Index for Saskatchewan (the average of Saskatoon and Regina) for the preceding twelve months.

2. VACATION

The vacation period should be six weeks annually. One-half of that period can be carried over into the succeeding year.

3. EARLY RETIREMENT

A Judge between 60 and 65 years of age with 15 years of service should be entitled to retire with his earned pension without reduction. A Judge between 55 and 60 years of age with 15 years of service should be entitled to retire with his earned pension less a reduction of 5% for each year remaining to the age of 60 years.

4. PENSION CONTRIBUTION

The pension should continue to be a contributory plan.

5. CANADIAN PENSION PLAN BENEFIT

The judges' pension should not be reduced by benefits payable under the Canada Pension Plan.

6. GROUP LIFE INSURANCE

The maximum death benefits payable under the group life insurance plan should be increased to $400,000 plus $100,000 in the event of accidental death.

7. SPOUSAL DEATH BENEFITS

There should be no change in the amount of the spousal pension. Where a judge dies while holding office, the spouse should receive a gratuity equal to two months salary.

8. INDEXING DEATH BENEFITS

Pensions should not be indexed for inflation.

9. SUPERNUMERARY JUDGES

A supernumerary program should not be established for the Provincial Court.

10. DISABILITY BENEFITS -

Section 39 of The Provincial Court Act should be amended to provide as follows:

(a) the words "permanent infirmity" should be replaced by the words "temporary or permanent disability, illness or infirmity".

(b) resignation or retirement should not be required for the payment of disability benefits, and the section should make specific provision for a judge on temporary

or permanent disability returning to the Bench after his condition has improved.

(c) all decisions concerning the existence of a temporary or permanent disability, or eligibility to return to active service, should be made solely by the Judicial council.

(d) the benefits payable for permanent disability should be 70% of salary.

(e) the benefits payable for temporary disability should be 100% of salary.

(f) the period of temporary disability should not exceed three months.

(g) upon retirement by a judge who is disabled, his pension should be calculated in the normal manner based on the regular salary received by members of the Court and not on the reduced amount being received by the disabled judge.

11. SABBATICAL LEAVE

A sabbatical leave program should be established for the Court.

12. INCIDENTAL EXPENSES

Provincial Court Judges should receive a annual allowance of $1,000 for incidental expenses.

13. NORTHERN ALLOWANCE

The allowance for northern judges should be increased to $5,000. There should not be any increase in the vacation period.

14. SALARY OF THE CHIEF JUDGE AND ASSOCIATE CHIEF JUDGE

The Chief Judge should be paid an additional salary of $7,000 annually. The Associate Chief Judge should be paid an additional salary of $3,500 annually.

15. QUALIFICATIONS FOR APPOINTMENT

No person should be appointed as a Provincial Court Judge without ten year's experience at the Bar.

16. DATE OF RETIREMENT

There should be no change in the provisions for the date of retirement currently found in the Act.

A D D E N D U M

By

Harold G. Piercy, Member

Judicial Compensation Committee

This Judicial Compensation Committee, when considering and fashioning its recommendations, was faced with the unenviable task of determining in economic terms, the quantative worth of men and women who function as Judges. These people discharge the most difficult tasks which can be imposed on fallible men and women. There can be no task which requires greater wisdom, conscience, insight, and a greater sense of balance and proportion than is expected of Judges. Those characteristics are paramount because Judges are expected to conduct their Court and render their judgments with an acute sense of fairness and impartiality.

At page 3 of our report we wrote (in part) that during our public hearings the Committee heard from a number of witnesses, including several Provincial Judges. One of the Judges appearing was asked to describe for the Committee his philosophical approach to judging. Here verbatum, is what he had to say:

> "I think, sir, that my colleagues would agree that a judge must be committed to, must subscribe to, and must project that absolute integrity which builds and supports the public confidence in the judiciary, that supports the feeling in people who must appear before the courts that the person

> who is going to judge him or them or her is what a judge is required to be by long tradition and by the law of this country; that is, fair and impartial. It is not sufficient merely that he be fair and impartial. It is necessary that by his conduct personally off the Bench and on the Bench and, by the way, by his demeanour on the Bench, it is evident that he is indeed what the law requires, fair and impartial.
>
> If at the end of the day people walk out of my courtroom feeling nothing definite, but feeling that I have somehow deprived them of a fair hearing, whether it is true or not, that somehow I have not been impartial, then I have failed. I have failed notwithstanding that the case may be appealed and my decision may be sustained because it was right in law.
>
> I will achieve a degree of success if at the end of the day the unsuccessful party leaves the court feeling, although he has lost and is not very happy about it and may not agree with my ultimate decision, that I have not been biased, that I have demonstrated an impartiality.
>
> The title of "judge" clothes those people who are entitled to use it with what is sometimes called "instant credibility." The very fact that a person is a judge, that he/she is a judge, will infer to many people that he/she is impartial, that he/she is fair, that he/she is approachable. That extends not only to his/her work on the Bench but in personal life.
>
> It is important to the confidence in the justice system I think that judges live up to the image which the title artificially creates for them.
>
> In a few words really I think that expresses what my philosophical feelings are."

Fairness is so integral to a Judge's way of life that it is not, nor should it be, difficult for others to understand a Judge's sense of frustration and dismay when he or she is personally being unfairly treated, or where

there is a reasonable basis for him or her (meaning the Judges) perceiving there has been unfairness. Manitoba Provincial Judges are now and have for some time, been paid salaries, and provided with pensions at retirement which are unfair by any reasonable standard or measurement.

This Judicial Compensation Committee was mindful of what has been generally described as the Government's ability to pay in these very difficult economic times. We have given considerable weight to that influence; in fact, an argument can logically be made that in attempting to balance interests we may have balanced the scales more in favour of the Government.

The unfairness which is visited upon the Provincial Bench is not a new phenomenon. The situation has been perpetuated with the passage of time. One has to ask the rhetorical question as to whether the situation has resulted from what has been called an "inability to pay", or whether it results from the application of the theory that "the squeaking wheel gets the grease".

Manitoba Provincial Court Judges in the past have had little more than moral-suasion available to them in their efforts to obtain remedy for their compensation grievances. On the basis of the information before us it is axiomatic

to say that their appeals in the past were met at best with token success.

Until the Provincial Court Act was amended in 1990 to make provision for the establishment of this review and recommendation process, Judges had no way other than the bended-knee process of having their compensation package objectively reviewed. Judges have by law or convention been denied all the leverages which are traditionally available to other income earner groups in society who feel they have been unfairly treated.

It may be said they can leave the Bench if they feel they are so unfairly treated, and that the present Bench could be replaced by others whose names may be on a list seeking appointment. It seems to this member that such a proposition fails to recognize the long standing and widely held view that financial security, security of tenure and judicial independence are inextricably linked. Appropriate salaries and pensions for Judges should be determined on their intrinsic justification, rather than on an economic competition.

For myself, it is neither satisfactory nor justifiable that Judges in Manitoba be the lowest paid in Canada; nor is it acceptable that they be paid at a level

of some $13,000 per year below the Canadian average for Provincial Court Judges, nor is it acceptable that they are afforded a pension upon retirement which is less than 50% of the value of average pensions available to their fellow Judges in all Provinces.

While there is a justifiable concern about the level of salaries currently being paid, the issue of pensions as our report recommends, should be a matter to be dealt with on an urgent priority basis. Frankly put, the pension formula currently in place for determining Provincial Court Judges' salaries is inappropriate and is out of step with formulas applied by all Provinces in Canada, except for Newfoundland.

To illustrate the extent to which the formula is inapplicable and out of step, with pension plans for Judges in other jurisdictions, it is instructive to note that Judges in Manitoba would have to be paid a salary in the range of $180,000 per year averaged over five (5) years in order for the existing Manitoba formula to generate a pension at retirement for Judges approximately equal to the pension available at retirement for Judges in Nova Scotia, New Brunswick and Saskatchewan.

Peter H. Russell is a Professor of Political Science

at the University of Toronto. Additionally since 1989 he had been the Chairperson of the Advisory Committee on Ontario Judicial Appointments; and he is the immediate Past President of the Canadian Law and Society Association. He is also the author of the text, The Judiciary in Canada: The Third Branch of Government. During his testimony to our Committee he was asked what comment he would make about the level of salaries paid to Provincial Court Judges in Manitoaba. His response was:

> "In my judgment, they are grossly inadequate, more than that, I would say almost shamefully inadequate. That poses a real threat, I should have thought, to the quality of justice in Manitoba. The salaries of all Provincial Court Judges in Canada are too low at present, but to be at the very lowest of the low is to be too low indeed."

Professor Russell's comment may be said to be too severe or too dramatic but nonetheless, those comments were made by an individual whose main area of research and writing for the past 32 years has related to the study of legal institutions, including the judiciary.

The concluding comments I would offer are that the disparity in salary is so great as compared with salaries of their fellow Judges across Canada, and even more concerning the pension benefits comparatively speaking are so inferior that we in Manitoba risk a very real potential for Judges

to feel that they are compelled to stay on the Bench longer than they otherwise would for reasons which are driven primarily by economic needs, rather than for reasons which attracted them and commended them to the Bench in the first place. If that were to occur there would, as Professor Russell observed, indeed be a real threat to the quality of justice in Manitoba.

All of which is respectfully submitted.

DATED at Winnipeg, Manitoba, this 7th day of June, 1991.

Harold G. Piercy